

REMARKS

Claims 1-10 are pending in this application. Claims 1-10 currently stand rejected. By this Amendment, claims 1 and 7 are amended and claims 11-29 are added.

In view of the foregoing amendments and the following remarks, reconsideration is respectfully requested.

Claims 1-3, 5-6 stand rejected under 35 U.S.C. Section 102(e) as being anticipated by Walsh et al. (U.S. Patent No. 6,144,848). Claim 1 has not been substantively amended. Rather, only the word "and" has been added between clauses of the claim. Claim 1 is directed to a system for playing prerecorded music. The system has a wireless communications device having a memory, a player, and a speaker. The system further has a remote storage facility that stores a plurality of music recordings. As claimed, the wireless communications device is used to wirelessly retrieve at least one of said selected music recordings for complete storage of said music recording in said memory and for playback through the speaker by the player.

Walsh et al. do not teach or suggest the claimed invention. In particular, Walsh et al. do not teach or suggest "complete storage of said music recording in said memory", as claimed. Rather, Walsh et al. teach interactive, real-time telecommunications. As described at Column 3, lines 40-59 (cited by the examiner) and at other places in the specification of Walsh et al., "[a] user . . . can enter command messages (including bar coded messages) directing the host server to supply information on a real-time, interactive basis including multimedia information such as text, data, calculations, reports, voice, sound, music and graphic information." At page 14, beginning at line 63 of the Walsh et al. specification, "Real Time" is defined "to mean that the subject process takes place while the user is in telecommunication with the host computer server" Walsh et al. teach and contemplate only outputting informational messages (which may include multimedia including music) as they are received at the user device.

Walsh et al. do not teach or suggest a wireless device or handheld computing device for playing recorded or encoded music stored in the device. Rather, Walsh et al. teach transmission and output of informational messages (which can include music) to a handheld user device. Additionally, any device constructed according to the teachings of Walsh et al. would require a communications link to be established with a remote server in order for the user to receive and output any message including music. In contrast, the presently claimed embodiment(s) of the invention, for example, allow(s) a user to download favorite music recordings for storage in the user's cellular phone or PDA. The music recordings can then be played without the need to establish and maintain a communications link with a remote server.

Claim 4 stands rejected under 35 U.S.C. Section 103(a) as being unpatentable over Walsh et al. (U.S. Patent No. 6,144,848) on the grounds that "it is obvious that the user device as disclosed in Walsh et al. can be installed anywhere" (citing paragraph 5 of the Office Action). Applicant respectfully disagrees. Walsh et al. is primarily directed to a device having a

bar code scanner that can scan a bar code to initiate a link with a remote server for retrieving informational messages relating to the bar code. Unlike listening to music, which is a conventional practice when driving in a vehicle, Applicant submits that use of a device made in accordance with Walsh et al.'s teachings should not be used when driving, and therefore does not fairly teach or suggest applicant's claimed invention.

Claims 7-10 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over Walsh et al. (U.S. Patent No. 6,144,848) in view of Donner (U.S. Patent No. 5,722,069).

Claim 7, as amended, is directed to a device having a processor, a memory for storing a music recording in an encoded format, a buffer through which said encoded music is streamed, a player for playing said encoded music as it is streamed through said buffer, and a speaker for outputting said encoded music as it is played. As claimed, the device is a wireless communications device in the form of a cellular telephone or hand-held computing device.

As described above, Walsh et al. does not teach or remotely suggest at least the limitation of "a memory for storing a music recording in an encoded format." Donner also does not teach or suggest at least this limitation. Further, Applicant does not concede that Walsh et al. and Donner can be properly combined, and therefore reserves the right to submit further remarks in that regard should this rejection be maintained. However, given the fact that even a combination of the teachings of these references does not result in the limitations set forth in claim 7, applicant believes that no further remarks should be necessary at this time.

Claim 8 includes the additional limitation of an input for selecting a recording. Nothing in Walsh et al. or Donner, or the combination thereof, teaches or suggests an input for selecting one of a plurality of music recordings with a cellular telephone or handheld computing device. The examiner does not specifically address claim 8 in the Office Action. Applicant believes that it should be allowed by virtue of its dependence from an allowable base claim and, further, in view of the additional limitation(s) set forth in claim 8.

Claim 9 includes a limitation of a removable memory having encoded music therein. The examiner contends that removable memory is well known and commonly used in the art. Applicant respectfully disagrees. Additionally, as stated, "the combination of Walsh and Donner do not teach the claimed invention except the removable memory", as stated in the Action, since Walsh and Donner do not even teach or suggest storing encoded music in memory (whether removable or not). The additional claimed limitation of a removable memory only further distinguishes the presently claimed invention from the cited references.

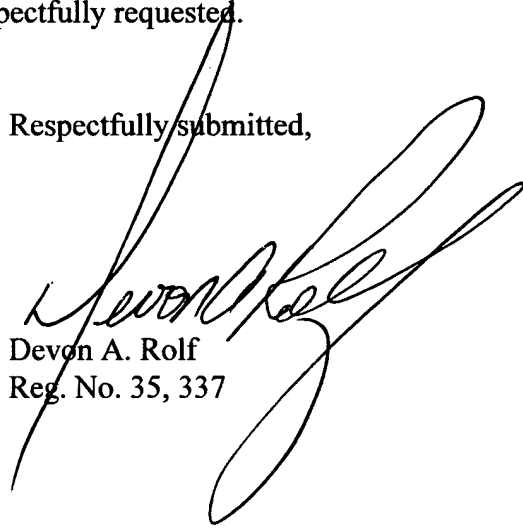
Claim 10 includes the additional limitation(s) of the encoded music in the removable memory having been downloaded to the device. Again, the art of record does not teach downloading recorded music for storage in a memory. Accordingly, it is believed that claim 10 is allowable by virtue of its dependence from an allowable base claim and, further, in view of the additional limitation(s) set forth in claim 10.

Claims 11 to 29 have been added. Entry and allowance of these claims is respectfully requested.

On March 6, 2001, Applicant submitted an IDS. In the Office Action of August 13, 2003, the examiner included the IDS PTO Form 1449 Applicant submitted, but did not initial next to the references listed to indicate that they have been considered. Applicant requests that the examiner consider these references and indicate that they have been considered by initialing next to the references on the Form 1449. Additionally, Applicant brings to the examiner's attention Applicant's co-pending patent application Serial No. 09/635,935, filed August 10, 2000, entitled A Device, System and Method for Making Transactions Via a Wireless Communications Link. The subject matter claimed in that application is unrelated to the subject matter claimed in the present application. In that application, applicant submitted a Declaration similar (yet different in factual circumstances) to the Declaration previously submitted in the present application and it was at least initially deemed insufficient to overcome an antedated reference. In particular, the involved dates, antedated reference and subject matter in that application differ from that which are involved here. Applicant traversed the position of the examiner in that application and the issue is now moot as the result of further examination of the application. Nevertheless, applicant discloses this fact in order to meet any and all possible duties of candor.

In view of the foregoing amendments and remarks, it is believed that this application is in condition for allowance. Such Action is respectfully requested.

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to Devon A. Rolf, is written over the typed name and registration number.

Devon A. Rolf
Reg. No. 35, 337